

ZONING BOARD OF APPEALS
MINUTES
April 19, 2005

Members Present

Barry Silverstein – Chairman
Maureen Kangas – Vice Chairman
Ronald Critelli
Lynne Raver
Marc Breimer – Alternate
April Callahan - Alternate

Members Absent

MaryAnn Leenig

Others Present

Janis Gomez, Esq. – ZBA Attorney
George McGann – Town Building Inspector, Acting Zoning Administrator
Christopher Colsey – Director of Municipal Development

Notice of Appeal Hearing was published in the Beacon Free Press, The Poughkeepsie Journal and the Southern Dutchess News.

Notified of the variance requests were the Town Board, Town Fire/Building Inspector, Town Planning Board, New York State Department of Transportation, Dutchess County Department of Planning, Zoning Administrator and surrounding property owners.

The meeting of the Zoning Board of Appeals was called to order at 7:08 p.m. by the Chairman. He made announcements regarding the no smoking policy and the emergency exits and fire procedures.

Chairman Silverstein introduced April Callahan as the newest Alternate Member of the ZBA and announced that Alternate Marc Breimer was sitting on the Board tonight with full voting rights.

Chairman Silverstein called for comments or corrections to the minutes of the March 15, 2005 meeting. Hearing none he called for a motion to accept the minutes as written.

Maureen Kangas made the motion to accept the minutes as written.

Marc Breimer seconded.

Motion Carried

Barry Silverstein - Aye

Ronald Critelli - Aye

Lynne Raver – Aye

Maureen Kangas – Aye

Marc Breimer - Aye

Old Business

Application Number ZB05-001, submitted by Lori Joseph Builders, is requesting the following variances; 1) front yard setback of 30ft where 35ft is the minimum 2) rear yard setback of 30ft where 40ft is the minimum 3) right yard setback of 15ft where 20ft is the minimum 4) lot size variance of 11,230sq ft where 20,000 is the minimum 5) lot depth of 100ft where 125ft is the minimum required in an R-20 Zoning District
Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

Chairman Silverstein advised that the applicant has requested an adjournment for tonight's meeting.

Application Number ZB04-011, submitted by Donald Worthy, 73 Delavan Ave, who is requesting a variance to (1) access his property from other than a public thoroughfare, and (2) requesting a variance to construct a retaining wall of 7.5ft, being the greater variance, with a 3.5ft guardrail where the maximum allowed is 6ft, and (3) requesting a variance for a rear yard set back of 30ft, being the greater variance, where 60ft is the minimum rear yard setback in an R-4A Zoning District.

Chairman Silverstein announced that a request has been made by the applicant to close the ZBA Public Hearing.

Motion to close the Public Hearing made by Maureen Kangas

Seconded by Lynne Raver

Motion Carried

Barry Silverstein - Aye

Ronald Critelli - Aye

Lynne Raver – Aye

Maureen Kangas – Aye

Marc Breimer – Aye

Janis Gomez requested verification that the application was being withdrawn. Chairman Silverstein confirmed that it was.

Votes

ZB05-003 Mega Funworks, Inc.

Motion to GRANT the variance was made by Maureen Kangas

Seconded by Lynne Raver

Carried

Barry Silverstein - Aye

Ronald Critelli - Aye

Lynne Raver – Aye

Maureen Kangas – Aye

Marc Breimer - Aye

ZB05-004 Quality Inn (Formally known as the I-84 Hotel)

Chairman Silverstein requested that Janis Gomez address the floor concerning comments made at the last meeting regarding the notification process. Ms. Gomez stated that there were questions raised whether the Green Hills Condominium Complex was properly notified. She advised that she researched the notification records and all of the individual owners within 500 feet were notified and the condominium association was also notified. It is the position of the ZBA that the notification was proper.

Grace Palladino, Managing Agent at Green Hills Condominium, stated that the Association was not notified. The individual owners within the 500 feet were notified, but as stated at the last meeting, as a condominium complex, the property is owned collectively not individually.

Chairman Silverstein advised that he understood the comment and asked Nancy Lecker if a letter had been sent to the association. Ms. Lecker confirmed that it had. The Chairman stated that the ZBA records indicate the association had been notified and Ms. Palladino may get together with Ms. Lecker regarding it.

The Chairman announced that the vote would not take place at this meeting due to the fact that there was an issue with SEQR and the Lead Agent for the project. The ZBA conferred with the attorney regarding a coordinated and un-coordinated review. The ZBA's position is that it should be part of a coordinated review of all involved agencies, with the Planning Board being the lead Agency.

Grace Palladino asked what SEQR was. Janis Gomez replied that it was the State Environmental Quality Review act. The Chairman explained that it addresses the pros and negative effects on traffic, parking, and other things of this nature. This review must be done and the ZBA has not received confirmation that it has been done. Ms. Palladino asked if the noise factor will be part of the study. Chairman Silverstein advised that it would be. Janis Gomez advised that the Lead Agency notification was done, but it was unclear as to whether the ZBA received the notification and if the ZBA would defer to the Planning Board as the Lead Agency. The applicant should be requesting at the next Planning Board Meeting a re-notification of all the involved agencies. A letter will be read into the minutes of this meeting requesting the ZBA do its own study. The Board has decided that it would instead be part of a coordinated review process.

Raymond Tyrrell asked if there will be a meeting next week. Chairman Silverstein advised that there will be a Planning Board Meeting next week, but he does not have the agenda for it.

Chairman Silverstein read a letter from Richard Olson, Esq., McCabe and Mack, requesting that the vote be deferred until the May meeting due to the fact that the SEQR notification may have been incomplete. Mr. Olson requested the ZBA due a separate SEQR study regarding the 3rd story variance. A request will be made to the Planning Board to re-circulate for Lead Agency at its next meeting.

The Chairman advised that this letter is a request to the ZBA. The Board had an attorney client meeting to discuss the issues and have decided not to pursue a separate SEQR. The Board will not discuss this any further until the SEQR process has been completed. Chairman Silverstein stated that a letter will be sent to Mr. Olson advising him of the ZBA's decision.

New Business

Appeal #1

Application Number ZB05-002, submitted by Jean-Pierre Baril, 32 Red Schoolhouse Rd, Fishkill, requesting an 18ft variance, creating at 17ft front yard setback where 35ft is the minimum setback in an R-15 Zoning District.

Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

The Chairman read the following communications:

Dutchess County Planning Department cites it as a matter of local concern.

Town of Fishkill Planning Board cites it as a matter of local concern.

They note that the house was built in 1928, prior to zoning. The request creates an expansion of an existing non-conforming structure. The expansion is toward a well traveled road and consideration should be given to utilizing the rear of the building for the expansion.

Represented by: Jean-Pierre and Rhonda Baril

Mr. Baril stated that the property was level with a wall at the road until 1995 when the Town improved the road. The improvement helped with a blind spot that they had from their driveway but also they also lost about 12' from the front of their property.

Chairman Silverstein requested verification that the frontage lost was from the Town's Right-of Way and not their property. Mr. Baril confirmed this.

Mr. Baril stated that they would like to add a family room and an office in front because they have already added a bathroom in the rear. It is no longer an option to put any additional construction in the rear. They have two large maple trees in the front of the house that are over 100 years old. They would like to build the room and new porch out

front so that when the children are waiting for the bus they won't get wet when it's raining or worry about getting hit by the tree branches.

Chairman Silverstein asked if the office was for personal use or a business. Mr. Baril advised that it was for personal use if he decided to work at home. Chairman Silverstein verified that he would not be generating traffic. Mr. Baril confirmed this.

Maureen Kangas asked if they would be taking the maple trees down. Mr. Baril stated that they would not. The additions will be behind the trees.

Chairman Silverstein called for additional comments or questions. Hearing none, he requested a motion to close the Hearing.

Maureen Kangas made the motion to close the Public Hearing

Seconded by Lynne Raver

Motion Carried

Barry Silverstein - Aye

Ronald Critelli - Aye

Lynne Raver – Aye

Maureen Kangas – Aye

Marc Breimer - Aye

Appeal #2

Application Number ZB05-005, submitted by Rainbow Bridge Pet Cemetery, seeking an interpretation of the GB / R-15 Zoning Districts Regulation regarding pet cemeteries as a permitted use and a crematory as an accessory use.

- 1) **In accordance with section 150-33A, Table I, Permitted Principal Use #4 “Cemeteries” are listed subject to special use permit procedures. The schedule of regulations does not differentiate between a “cemetery” or a “pet cemetery; therefore, you will require further interpretation from the Zoning Board of Appeals.**
- 2) **The use “Crematory” does not appear in the schedule of regulations; therefore, such use is deemed to be prohibited. Relief may be sought by filing for a use variance from the Zoning Board of Appeals.**

This request is made by the applicant, who seeks an interpretation from the ZBA of the Zoning Administrator's decision regarding Chapter 150 of the Code of the Town of Fishkill, New York.

Chairman Silverstein read a communications from the Dutchess County Department of Planning stated they have no authority on this.

Represented by: Amy Bombardieri, Oswald & Gillespie, and Kathryn Griffin, Rainbow Bridge Pet Cemetery

Ms. Bombardieri stated that the applicant is seeking to create a pet cemetery. The Property lies within both the R-15 and GB Zoning Districts. They are looking for an interpretation of what would be allowed.

Chairman Silverstein asked where on Old Route 9 the parcel is located. Ms. Bombardieri advised that the parcel is just south of the Wappinger town line.

Chairman Silverstein asked Janis Gomez to address the Board. Ms. Gomez advised the Board that an interpretation needs to be done. A cemetery is listed as a permitted use in the Zoning Regulations within this district with a special permit. There is no definition of a cemetery or pet cemetery in the code. Ms. Gomez researched the state regulations on pet cemeteries which defines it as a place to intern animals. The law regarding pet cemeteries is related to licensing whereas the law regarding funeral homes and cemeteries are not all licensing related. The only definition of a cemetery is listed for the internment of people. The Town of Fishkill's code does not specifically state that any word not listed is given its ordinary meaning, but what other meaning could be given for it. The Board must decide if the word "cemetery" would include a "pet cemetery". In the state regulations a pet cemetery was specifically referred to as such and a cemetery was defined for human remains. With regards to the crematory, it is not listed as an accessory use in the code, so as such under the code is not an allowable use. Ms. Gomez advised the Board that the Applicant can make an argument to the Board for another interpretation.

Chairman Silverstein asked for verification that a pet cemetery is actually licensed by the state. Ms. Gomez confirmed this and added that the state has regulations that the applicant must meet to get a license.

Chairman Silverstein asked if they could not get a crematorium, would they still be interested. Ms. Bombardieri stated they might still be interested but Kathryn Griffin, from the Rainbow Bridge Pet Cemetery advised that they would not.

Chairman Silverstein requested verification that a crematory is against the code. Ms. Gomez advised that since it is not listed as a permitted use, it is a prohibited use. Ms. Bombardieri asked if it would be considered an ancillary aspect of a funeral home which is permitted in the district. Chairman Silverstein stated that the Board does not agree with her. Ms. Gomez stated that it is not even list with funeral homes. The Chairman also advised that the Town of Fishkill does not have a funeral home within its borders.

Maureen Kangas asked if this is what was involved in the interpretation. Ms. Gomez advised that it is, in regards to the pet cemetery but not with the crematory. If it is not listed as a permitted use then it is prohibited. If there is a way to show that in a comparable situation that it is an ancillary use, which it what the Applicant is asking for, then there may be some question whether it may be an ancillary use. Ms. Gomez stated that she could not find anything in the Town Code that mentions even funeral homes, except that they are allowed. Ms. Gomez stated that she would not say that a funeral home is the same thing as a cemetery. A crematory is not an ancillary use to a human cemetery, therefore if there was an argument was being made that a cemetery and a pet

cemetery are the same thing, then the question becomes whether it is an accessory or ancillary use to a pet cemetery.

Chairman Silverstein called upon George McGann, Building Inspector, for his opinion regarding the crematorium. Mr. McGann stated that generally a crematorium is part of a larger use. He asked the Applicant if theirs will be a stand alone. Ms. Griffin confirmed that it would be. Mr. McGann stated that this was where the interpretation is necessary. Funeral homes and mausoleums are larger uses with crematory provisions. They are part of that use as equipment installed for the use. Stand alone crematoriums if not listed as such to be the primary use, which is where the interpretation comes in, are not listed as a primary use nor as an accessory use in the districts that they are in.

Janis Gomez asked how crematoriums are regulated. Mr. McGann advised that the regulations probably fall under the Department of Health and under the Building Code. The Building Code for the instillation and arrangement within a building and the Department of Health for the operation of it.

Chairman Silverstein requested that this Hearing be held over to give the Applicant time to get the Board more information regarding these specific questions. Janis Gomez advised that the Board should define what it wants as best as they can. The Chairman advised the Applicant to gather whatever research they have since they are adamant on having a crematorium to operate the cemetery. He advised that the ZBA will also research whether a crematory is allowed within the Town.

Amy Bombardieri asked what information the ZBA is looking for. Chairman Silverstein advised that the ZBA may get the interpretation that it is not legal and the Applicant will want to produce evidence to contradict it. Ms. Gomez stated that the Applicant will want to argue why a cemetery should include a pet cemetery and why a crematory would be an ancillary use for it. Ms. Bombardieri asked if the Board's interpretation of a pet cemetery is different from a human cemetery. Chairman Silverstein stated that currently the Board does not have an interpretation. He advised that the Zoning Code only lists a cemetery. If this was an isolated instance, the Board Members would listen to the presentation and vote on it next month. There is no need to continue at this time to listen to an argument regarding the cemetery since the Applicant does not want to proceed without a crematorium.

Chairman Silverstein called for questions or comments from the floor.

Mr. and Mrs. O'Malley, Old Route 9, asked if there would be an odor or emissions from the crematorium and how will they handle the waste from it. Mr. O'Malley advised that their property borders the Applicant's and it sounded like a good idea and was fine with them. Chairman Silverstein advised the Applicant to provide the answer for this at the next meeting.

Marc Breimer stated that the first thing that needs to be done is to find out if a crematory is legal.

Maureen Kangas stated that it was a wonderful idea and asked the Applicant how big it was going to be and if they were going to butt up directly against the adjoining residential properties. The crematorium is an important issue. Will there be toxic waste. Kathryn Griffin advised that there will be some burials but that cremation is the bulk of the business. Ms. Kangas replied that in other words they would be able to cremate the animal and give the owner an urn. Ms. Griffin confirmed this. She stated that some people will want to take their animal home and some will want to bury them.

Ms. Kangas asked how much land they had. Ms. Griffin advised that they have six acres and the minimum in New York State is five acres for a pet cemetery.

Ms. Kangas asked how big the crematory is. Is it something that a resident would look out their window and see this crematory? This is something the neighbors will be interested in.

Marc Breimer stated that the issue that he sees is that it is not a primary use per say. This was presented as a pet cemetery with a crematorium as an accessory use. The question he wants answered before the next meeting is if a crematory, as a primary use, would it be considered an industrial operation. Since it is not dealing with human remains, in regulatory aspects, would this be considered more along the lines of a bio-medical waste incinerator? In that case the Board Members will need to know more about the regulatory and operational environment surrounding the operation.

Chairman Silverstein asked George McGann if this is allowed, does it then go before the Planning Board. Mr. McGann advised that it would as a special use permit.

Marc Breimer stated that in regards to the interpretation whether the use is more akin to a cemetery or an incineration facility, which he would consider more of an industrial facility.

Chairman Silverstein called for additional comments or questions. The Chairman stated that he wasn't sure regarding the building, whether it was a Planning Board issue, if it is even allowed. Janis Gomez advised that essentially what the Board is being asked to do is not to vary anything but to interpret the code for a permitted use and if it is permitted, then they will go to the Planning Board.

Marc Breimer stated what he wants to see is more information regarding a crematory for animals being considered, in a regulatory bodies as more of an industrial facility or as a cemetery type facility.

Chairman Silverstein asked Kathryn Griffin if they operate any other cemeteries. Ms. Griffin stated that this will be their first.

Chairman Silverstein called for additional questions or comments from the floor. Hearing none he requested a motion to adjourn the Hearing.

Lynne Raver made the motion to adjourn the Public Hearing.

Seconded by Marc Breimer

Motion Carried

Barry Silverstein - Aye

Ronald Critelli - Aye

Lynne Raver – Aye

Maureen Kangas – Aye

Marc Breimer - Aye

Janis Gomez advised that if they wanted to submit anything prior to the next meeting to get it to Nancy Lecker and she will distribute it. It may make the process run more quickly.

Amy Bombardieri asked if the Board was looking for examples of other pet cemeteries. Ms. Gomez advised that what the Board may be looking for is an argument as to why a cemetery is the same as a pet cemetery and also why a crematory is somehow an ancillary use of it.

Chairman Silverstein added Marc Breimer's point regarding the primary use being considered industrial. The Chairman stated that the one advantage that the Applicant has is that they are already state regulated.

Kathryn Griffin stated that she did have one copy of a presentation that they did at the preliminary meeting about six weeks ago. She presented it to the Board. Ms. Griffin stated that it told who they were and what they wanted to do. Nancy Lecker advised that she would make copies and distribute them. Janis Gomez asked if they had a preliminary meeting with the Planning Board. Ms. Griffin replied that they did.

Appeal #3

Application Number ZB05-006, submitted by Joseph Precour, who is requesting a variance to construct a single family home which will have an 8.8ft rear yard setback where 40ft is the minimum setback in an R-20 Zoning District.

Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

Chairman Silverstein read the following communications:

The Dutchess County Department of Planning cites this as matter of local concern.

The Town of Fishkill Planning Board notes that with the property's proximity to the creek, floodplain and wetland exposure should be verified. The Code requires a minimum exposure to dry land and the applicant should demonstrate the compliance with such to the satisfaction of the Building Inspector and it suggested

that an alternative plan to the undersized lot issue would be consideration to acquire the adjacent property.

JMK, Beacon Hills, wrote that there are several lots in Fishkill that can not be built on, and this is one of those properties. JMK noted that if the variance is granted, that septic, fertilizer and pesticides will add more pollution to the creek. On a rainy evening you can smell the septic because the houses are old and the land can't handle any more septic. If someone wants to live in Beacon Hills, there are plenty of houses for sale.

Mark Jones, Beacon, opposes the variance.

Janis Gomez advised the Board and the Floor that regarding comments made in the (JMK) letter and previously received letters, that "hardship" is not a criteria for an area variances. It had been in the past, but the Board now has a set of five criteria for consideration. If anyone wants a copy of the criteria, one will be provided.

Ms. Gomez also advised that in review of the application that it falls under a modification of a setback under 150-23 which is for undersized lots. Under this chapter the applicant must show two additional issues, one being that it met the zoning regulations when the deed to the lot was recorded and when the current zoning regulations came into effect that it was a single lot. Ms. Gomez contacted Povall Engineering and advised them of such and stated that the information may be obtained and given to the Board, or to her, at anytime and it would not stop the process of closing the Hearing if it was completed at this meeting.

Represented by: Bill Povall, Povall Engineering

Mr. Povall advised the Board that they do not have the information regarding the deed yet, but will get it to the Board.

Mr. Povall stated that this plan is a modification to a previous application where the Board had some concerns regarding the size of the home along with the additional variances that were needed. What they have done with this plan was to shrink the size of the house to meet the front and side yard setbacks. The only variance needed at this point is a rear yard setback. The septic system has been approved by the Department of Health. There is a primary system as well as an expansion area approved.

Chairman Silverstein called for questions from the Board.

Maureen Kangas stated if they made the house smaller to conform why they needed to get the rear yard setback.

Mr. Povall advised that currently in an R-20 Zoning District you need 35' for a front yard setback and 40' rear yard setback. The lot itself is approximately 75', so there is no room depth wise to place the home. Either way they would need a front yard or rear year setback variance.

Ms. Kangas asked if the house was being built for the owners, or as a spec house. Mr. Povall advised that he could not answer that question. Ms. Kangas stated that if a party

purchases a piece of property they should know what they bought. Mr. Povall stated that it was his understanding that the owner intends to live in it.

Chairman Silverstein addressed the Floor and advised for the audience present, if they were hearing this for the first time, that the reason the Board Members don't have additional questions is because the Applicant has been before the Board on a previous occasion and many of the original questions have been answered.

Mr. Povall added that there was a section of land that was created in the original subdivision that is owned by the Town for drainage. This created a 75' vacant parcel in the rear of the property where they are proposing their variance.

Maureen Kangas stated that there was nobody behind the owners. Mr. Povall advised that with the large buffer they decided to place the house further into the back.

Marc Breimer asked with the drainage in the rear, how stable is the geography there.

Mr. Povall stated that for time that he has been involved in the project, that he hasn't noticed any changes in the stream itself. There are a number of large boulders in the area that help control the erosion.

Marc Breimer asked what the approximate distance was from the edge of the ditch and where the water actually is. Mr. Povall replied that it is approximately 30'.

Lynne Raver commented that it was more of a stream. Mr. Povall agreed that it is running water. Mr. Povall also advised that from their maps, the property was not in the floodplain.

Chairman Silverstein called for questions or comments from the Floor.

James Walker, Maple St, asked for verification of the location of the lot. He stated that it was his first meeting and he wanted to be sure of the exact location on Brookside. Mr. Povall replied that it was Lot 13, Block A. At the time of the survey, it was Rodriguez. It is the parcel immediately to the north. Mr. Walker said ok. Nancy Lecker produced a copy of the GIS map and indicated the parcel for him. Mr. Walker stated that he was familiar with the street and just wanted to be clear of the location of the lot.

Linda Murray-Rodriguez, Brookside Rd, expressed concern regarding the size of the driveway. At the previous Hearing there had been concern over the size of the driveway being shown as a one car driveway. If the owner has two cars or has visitors, the cars would block the street. Would emergency vehicles be able to get through since it is a narrow road? There are children on the block and she wanted to know if it had been resolved. Mr. Povall advised Ms. Murray-Rodriguez that the driveway is a single wide 35' driveway which typically holds two cars. Ms. Murray-Rodriguez asked for verification that the issue had been resolved. Mr. Povall stated that it had. They moved the house further back.

Ms. Murray-Rodriguez questioned the 30' distance from the rear of the house to the creek. She asked Mr. Povall to confirm that the property curves in the rear. He did. Ms. Murray-Rodriguez stated that it wasn't a true 30' distance. Mr. Povall corrected her. He advised that the property had been surveyed by a professional and that the closest point from the stream to the house is the 30'.

Ms. Murray-Rodriguez stated that the last application was for 12 variances. She asked if all 12 variances have been resolved. Mr. Povall stated that they were here now for only one variance. Ms. Murray-Rodriguez asked if the other 11 have been resolved. Chairman Silverstein advised that the other variance haven't been solved, they have been withdrawn. The application has been changed. They are submitting a new layout which eliminated the other variances. She asked if with the new layout the applicant was in compliance with the Town of Fishkill. Chairman Silverstein and Maureen Kangas agreed that they were except for the rear setback.

James Walker asked what the closest point was from the septic to the stream. Mr. Povall replied that it was approximately 100 feet from the fields to the stream. It was a concern of the Department of Health and one of the reasons to locate the septic system in the front of the house near the road.

Janis Gomez stated for the record that there was an exaggeration in that there never was a request for 11 variances. Chairman Silverstein agreed. He stated there were several, but now they are down to one.

John Steele, Beacon Hills, stated that when the Hearing was open the last time the owner purchased it at a tax sale and was not going to live there because he was asked that at that meeting. The owner stated he was building a house to sell it. Nancy Lecker corrected him and advised that variance was for the Damien Patrick, Jack Huff property. Chairman Silverstein agreed and advised although it did not go over well; he did believe the owner stated that he was planning on living in it. Chairman Silverstein and Janis Gomez both stated that legally, it wouldn't matter if the owner was planning on living in the house. Mr. Walker stated that if someone purchases a sub-standard lot at a tax sale and knows that it will not meet the zoning requirements that should be taken into consideration. Chairman Silverstein agreed. Mr. Walker stated whether the owner lives there or not, they are taking the gamble on buying the property and hoping to get the variances.

Chairman Silverstein called for additional questions or comments. Hearing none he requested a motion to close the Public Hearing.

Maureen Kangas made the motion to close the Public Hearing.

Seconded by Marc Breimer

Motion Carried

Barry Silverstein - Aye

Ronald Critelli - Aye

Lynne Raver - Aye

Maureen Kangas - Aye

Marc Breimer - Aye

Janis Gomez advised Bill Povall that if the information needed to make a decision is not received in time for the next meeting, the applicant will need to agree to extend the time limit for the decision. Mr. Povall agreed.

Appeal #4

Application Number ZB05-007, submitted by Cranesville Block Company, to construct a 50' silo where the maximum height allowed is 35' in a GB Zoning District. Said request is a violation of Chapter 150-33.B. of the Code of the Town of Fishkill.

Chairman Silverstein read communications from the following:

DC Department of Planning cites this as a matter of local concern

Town of Fishkill Planning Board cites it as a matter of local concern but notes that they have reviewed the plan due to an amended site plan and has included the ZBA as a condition of their final resolution.

A letter from Ed Buschek objecting to the variance

Represented by: Don Bassett, Cranesville Block

Mr. Bassett presented to the Board a copy of their site plan. He advised that they are requesting a variance to place a 50' silo behind the three 50' silos currently there. They need the silo to keep up with the new products that the NYS DOT comes up with for their jobs as well as keeping up the demands of their customers.

Chairman Silverstein requested verification that this will be a 4th silo and it is not replacing one. Ms. Bassett confirmed that it will be an additional silo. Mr. Bassett advised that during the last year there has been a shortage of cement throughout the US. This silo will give them the extra storage capacity and to help meet the demands of their customers.

Maureen Kangas stated that the residents expressed concern that the new silo will be visible. She asked if the existing silos were visible and how close will the new one be built. Mr. Bassett advised that the new silo will be set between an original silo and a building. It will not be visible from Route 9 or anywhere except from the mountain directly behind them. Ms. Kangas asked what the silo will be used for. Mr. Bassett replied that it will be used for cement material. Ms. Kangas asked if they were noisy. Mr. Bassett advised that there are air-raiders. The cement goes into the silo and the air-raiders are small pads. There are no vibrators and there is no noise.

Chairman Silverstein called for additional questions from the Board. None voiced. The Chairman asked how much volume this silo will generate. Mr. Bassett advised that he hasn't seen the dimensions for the silo but typically they hold enough for two cement tankers which is approximately 120,000 pounds.

Maureen Kangas asked if there would be additional trucks going in and out. Mr. Bassett denied it. He advised that once the silo is filled they would not have the capacity to go through that much material on a given day. It will be there for the extra capacity in case

they can't get a truck or they run into problems. Ms. Kangas asked if they will increase production in the future. Mr. Bassett advised that they may.

George McGann gave a technical clarification. One of the comments in a letter that had been read stated that there were 150 trucks per day. Given a 10 hour working day, as an example that would make a truck every four minutes.

Chairman Silverstein called for additional comments from the Board. Hearing none he recognized the Floor.

Peter Rothenberg, President of the Fishkill Ridge Caretakers, presented a letter to the Board. He stated that they are a citizen group who are active in protecting the drinking water. He advised that the Fishkill Spout Creek Aquifer runs under Route 9. Much of the eastern portion of the aquifer is contaminated due to human activity. Mr. Rothenberg advised that members of their group have been going to the Planning Board Meetings in Montgomery. The Planning Board has had six Public Hearings regarding Cranesville. He stated that a Planning Board would not meet six times on one project unless contradictory statements are made. That is what is going on over there. What is happening here is during the time that Cranesville operated the Redi-Mix Plant, anytime it rained, the raw untreated industrial waste from their plant would flow across Route 9 as a yogurt looking material and under Route 9 and flow into the bottom of the Southern Dutchess Sand and Gravel Operation, which is up gradient from the most important regional water supply in this area. Mr. Rothenberg stated that they have made complaints regarding this and Cranesville is now planning on diverting the water. He doesn't know if it is a good idea or not. They need science in order to determine if it is. With the silo that would be present, it's not an issue whether it makes noise. The relevant issue is that it would permit more activity there. He referenced the comments made by Mr. Buschek regarding the increase activities association with noise, smells, and sounds. As a public health official, Mr. Rothenberg stated he is concerned that Cranesville is extracting between five and twenty-five thousand gallons of pure Fishkill water and returning it tainted with chemicals. The raw industrial waste flowed over and under Route 9 until a citizens group pointed it out. There was nobody monitoring that. If Cranesville is taking between five and twenty five thousand gallons a day and the average house uses two hundred gallons per day, they are extracting water from between 25 and 150 homes, in the region of the county with some of the most serious water problems and the largest growth. Mr. Rothenberg stated that the ZBA has an important decision to make as to whether this should be allowed to increase.

Vicki Calder, Carol Lane, stated that her main concern is the water, noise, dust and traffic. The trucks cut you off as they come in and out. They don't want to wait for the cars that are coming down the road. Ms. Calder was also concerned regarding night time work. She understands that they have a special use to handle DOT and IBM, but the noise coming in at 10:00pm and midnight and then again at 5:30am and the dust is incredible. They have to breathe it everyday. The dust also covers Route 9.

Chairman Silverstein asked George McGann if Fishkill has a noise ordinance. Mr. McGann stated that there is an ordinance for operating equipment in a residential area on Sundays and at certain times during the week. The Chairman advised Ms. Calder that he is aware of certain laws regarding this and recognized Councilman Dennis Zack sitting in the audience and advised her to contact him regarding it. Councilman Zack stated that he already has looked into it.

Ms. Calder asked if the site can be enclosed to keep the dust and noise down. Chairman Silverstein stated that the ZBA does not have the authority to make such a request. The Chairman advised that the only authority the ZBA has is to approve or disapprove a variance request. Anything else is the job of the Planning Board. They can set restrictions.

John Maguire, Carol Lane, stated that he is one of the closest properties to the site. He stated that the noise level is high. It starts as early as 6:00am and continues sometimes until 6:00 or 7:00 at night. If Cranesville is allowed to erect another silo and expand, the noise level is only going to get worse. When he stands in his backyard he has to talk very loud to his wife and kids. The smell of diesel fuel in the morning is another concern. He doesn't know how long the trucks run in the mornings but he is going to keep track of it. They idle longer in the winter than the summer, but they do idle for more than five minutes which is against the law. The fumes go straight up and create a blue cloud which enters their homes.

Ronald Critelli asked Don Bassett what would be the impact if they had a 35' silo. The implication is that it is only going to be used for storage. Mr. Bassett replied that it is a gravity pitch silo and they need the height.

Ed Buschek, Carol Lane, stated that although there would not be any noise from the silo, there would be noise associated with the trucks coming in with material and loading it up. He stated that he has all of the papers that were submitted to the Board in 1995 when the previous owner requested a use variance. His request was for a very small operation. A letter submitted to the ZBA said that the variance should not be granted. There were two warehouses built next to this property so general business could fit in and wouldn't cause a hardship. There are other uses for this property. The letter asked if the adjoining neighbors would agree to the project. Mr. Buschek pointed to the back of the room and stated that all of the neighbors are sitting there. There are only about ten houses on Carol Lane. They didn't get a chance to stop the original project and what was once a two truck operation has grown into fourteen Redi-Mix trucks and so many delivery trucks. Mr. Buschek asked the ZBA to look back and ask why a heavy industrial activity is taking place in a General Business Zone. In the ZBA's decision it was stated that the variance was granted pending approval from the Planning Department on site planning. The Applicant has shown a use for the property. The Applicant will attempt to address all the concerns of the public letters on file. There are three public letters complaining about noise, dust and pollution. It has been ten years now and what does it mean to Cranesville. It is not a hardship and requests the ZBA look at the site and possibly move it someplace else.

Michelle Maguire stated that the workers get to go home but they're still left there. They have to wake up with the diesel smell. It sets off the alarms in the house. A few times during the winter they thought their boiler went out because of the fumes that come into the house. Ms. Maguire stated that they have two young children and within the last couple of years one has developed asthma. They play in the backyard and by dinner time they have to come in because they're coughing. Ms. Maguire stated that she is home all day and the noise is unbearable. Their house is the highest point and the doors of their house are level with the silos. There is a soot that comes down on the cars overnight. She stated that the trucks are there as late at 2:00am and you can hear the beeping of the trucks backing up.

Ms. Maguire stated that Cranesville hired somebody to study the noise and the gentleman arrived at noon. Ms. Maguire advised him that he came at the wrong time that everyone was at lunch. The following morning they didn't start the trucks until 7:10am.

James Walker asked what would be the impact on the business if the variance wasn't granted. Don Bassett stated that they may have trouble serving some of their clients. Mr. Walker asked revenue wise what the impact would be. Mr. Bassett stated that he did not have that information. Mr. Walker asked if it would be a great impact or a small one. Mr. Bassett advised that there would be some sort of impact. Mr. Walker asked if it would put them out of business. Mr. Bassett stated that it would not.

Maureen Kangas asked what concerns, if any, that Cranesville has for the neighbors. Have they done anything to work with them to build a fence or take into consideration everything that has been said regarding noise pollution? Mr. Bassett stated that they have the NYS DEC storm water prevention plan that has been in effect since they took over the property. They are in full compliance with the DEC regarding storm water run off and water drainage from the site. There have been many neighbors that have been trying to set up sound tests and air quality tests. Cranesville has been asking all of the homeowners for approximately a year and that Chris Colsey has copies of all of the emails that he sent out requesting permission from the homeowners to go in and do these tests. Mr. Colsey has received only one response from the Maguires. Ms. Maguire stated that they were still waiting for the results.

Chairman Silverstein stated that nothing was going to get resolved at this meeting. He asked George McGann if the ZBA Members could check with John Andrews to see what the environmental issues are with a fourth silo. Mr. McGann suggested that a good start would be to look at the Planning file. The Members can review the site plan and see the most recent amendments. There would be some back round regarding their review and the SEQR requirements. Chairman Silverstein stated that it is an unlisted action so the ZBA can look further into it. Mr. Bassett advised that Cranesville will supply any information needed.

Chairman Silverstein asked Janis Gomez if the ZBA needed Town Board approval to proceed with John Andrews. Ms. Gomez replied that she would check but believes that the ZBA is allowed to proceed for a more in depth SEQR process through the unlisted action. Ms. Gomez asked if the Chairman preferred that she contact Mr. Andrews regarding this. Chairman Silverstein requested that she contact him.

Chairman Silverstein called for a motion to adjourn the Public Hearing.

Maureen Kangas made the motion to adjourn the Public Hearing.

Seconded by Lynne Raver

Motion Carried

Barry Silverstein - Aye

Ronald Critelli - Aye

Lynne Raver – Aye

Maureen Kangas – Aye

Marc Breimer - Aye

Chairman Silverstein recognized Michelle Maguire. Ms. Maguire asked if the Board would hear from one additional resident. Chairman Silverstein confirmed that they would.

Janie Truss, 225 Carol Lane, stated that she agreed with the other residents who spoke tonight and hopes that the ZBA gives very careful thought and consideration to this. Ms. Truss stated that she doesn't know how the operation has become as big as it is. She stated that she just had dinner on her deck with her family after 7:00pm and the racket was so loud you couldn't hear the birds; you hear this commotion, the trucks, the loaders and whatever they are doing and then the smell from the diesel comes into their yard and house. Ms. Truss stated that she didn't know if a wall or building would solve it, but requests that the ZBA give it careful thought and to come out to see what is going on.

Ms. Truss stated that this was the first certified letter that she ever received regarding a meeting. She asked if they residents will receive any additional notices regarding upcoming meetings. Chairman Silverstein stated that the next meeting, which is on May 17th, will be published in the newspaper. He stated that it is the third Tuesday of the month.

Chairman Silverstein called for any new business. Hearing none he called for a motion to adjourn the ZBA meeting.

Motion to adjourn the ZBA Meeting was made by Ronald Critelli

Seconded by Lynne Raver

Motion Carried

Barry Silverstein - Aye

Ronald Critelli - Aye

Lynne Raver – Aye

Maureen Kangas – Aye

Marc Breimer - Aye

Meeting Adjourned at 8:37pm

Respectfully submitted,

Nancy Fitzgerald-Lecker
ZBA Clerk